

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD THOMAS,

Plaintiff,

v.

M. SEPULVEDA and DARRIN BRIGHT,

Defendants.

Case No.: C 14-1157 CW (PR)

ORDER OF SERVICE; DENYING  
MOTIONS TO ADD DEFENDANTS AND  
FOR PRELIMINARY INJUNCTION;  
DIRECTING PARTIES TO FILE  
CONSENT OR DECLINATION TO  
MAGISTRATE JUDGE JURISDICTION

Doc. no. 4

INTRODUCTION

Plaintiff, a state prisoner incarcerated at Corcoran State Prison, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by prison officials and medical staff at Salinas Valley State Prison (SVSP), where he was previously incarcerated. He has also filed a motion for leave to proceed in forma pauperis, which is granted in a separate order, and a motion to add additional defendants and for a preliminary injunction. For the reasons discussed below, his motion to add defendants and for a preliminary injunction is DENIED. The Court now reviews Plaintiff's complaint.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any

1 case in which a prisoner seeks redress from a governmental entity  
2 or officer or employee of a governmental entity. 28 U.S.C.  
3 § 1915A(a). In its review, the court must identify any cognizable  
4 claims and dismiss any claims that are frivolous, malicious, fail  
5 to state a claim upon which relief may be granted or seek monetary  
6 relief from a defendant who is immune from such relief. Id.  
7 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
8 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
9 1988).

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
11 allege two essential elements: (1) that a right secured by the  
12 Constitution or laws of the United States was violated, and  
13 (2) that the alleged violation was committed by a person acting  
14 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
15 (1988).

## 16 II. Plaintiff's Claims

17 Plaintiff alleges that, in 1989, he was shot, and in 2003,  
18 2007 and 2008, he was injured by correctional officers. As a  
19 result of these injuries he suffers from pain in his mid-back,  
20 lower-back and left shoulder and from paralysis in his left lower  
21 extremities. As a result of these symptoms, Plaintiff requires  
22 the use of a cane, back and knee braces, and a waistchain  
23 accommodation because he cannot place his hands behind his back.  
24 Plaintiff also needs a bottom tier cell because walking up stairs  
25 or an incline causes the vertebrae in his lower back to rub  
26 together, which causes excruciating pain. He also needs soft-  
27 soled shoes.  
28

1 On September 9, 2010, Plaintiff was examined by Defendant  
2 Darrin Bright, the SVSP Americans with Disabilities Act (ADA)  
3 Coordinator. Without physically examining Plaintiff, Defendant  
4 Bright decided to cancel all of Plaintiff's medical mobility  
5 assistance devices. Plaintiff personally had paid for two back  
6 braces and two orthopedic knee braces which Bright denied to  
7 Plaintiff.

8 On October 11, 2010, Defendant M. Sepulveda, SVSP Chief  
9 Medical Officer, denied Plaintiff's appeal of Bright's decision at  
10 the second level of review.

11 Liberally construed, the complaint alleges that Plaintiff has  
12 serious medical needs and that Defendants were deliberately  
13 indifferent to those needs. Therefore, the complaint appears to  
14 allege against both Defendants an Eighth Amendment claim for  
15 deliberate indifference to Plaintiff's serious medical needs.

16 III. Motion for Preliminary Injunction and to Add Defendants

17 Plaintiff moves to add individuals who are employed at  
18 Corcoran State Prison, where Plaintiff is presently incarcerated,  
19 as defendants in this action and for the issuance of a preliminary  
20 injunction against them.

21 This motion is denied. Corcoran State Prison is located in  
22 the Eastern District of California and, because the events or  
23 omissions giving rise to Plaintiff's claims against the Corcoran  
24 State Prison employees occurred in the Eastern District, the  
25 proper venue for a civil action against them is in the Eastern  
26 District, not the Northern District. See 28 U.S.C. § 1391(b).  
27 Plaintiff may file a civil rights action against these individuals  
28 in the Eastern District.

1 Because Plaintiff's motion for a preliminary injunction is  
2 directed at individuals at Corcoran State Prison, who are not  
3 parties to this action, this motion is denied without prejudice so  
4 that Plaintiff may re-submit it if he files an action against  
5 these individuals in the Eastern District. See Fed. R. Civ. P.  
6 65(d) (injunction is binding only on parties to the action, their  
7 officers, agents, servants, employees and attorneys).

8 IV. Consent or Declination to Proceed Before Magistrate Judge

9 In order to encourage the just, speedy and inexpensive  
10 determination of 42 U.S.C. § 1983 cases filed in this district,  
11 the parties may waive their right to proceed before a district  
12 judge and consent to proceed before a magistrate judge for all  
13 purposes. Attached to this Order is a Notice of Option to Consent  
14 to Proceed Before United States Magistrate Judge and an Order  
15 requiring the parties to notify the Court whether they consent or  
16 decline to so proceeding. The parties shall complete the  
17 requisite consent or declination form and return it to the Court  
18 as set forth in paragraph 4 of the Conclusion of this Order.

19 CONCLUSION

20 For the foregoing reasons, the Court orders as follows:

21 1. Plaintiff's motion to add defendants and for a preliminary  
22 injunction is DENIED. Doc. no. 4.

23 2. Plaintiff states a cognizable claim for deliberate  
24 indifference to his serious medical needs against Defendants  
25 Bright and Sepulveda.

26 The Clerk of the Court shall mail a Notice of Lawsuit and  
27 Request for Waiver of Service of Summons, two copies of the Waiver  
28 of Service of Summons, a copy of the Complaint (Docket no. 1) and  
all attachments thereto and a copy of this Order to SVSP

1 Defendants Darrin Bright and M. Sepulveda. The Clerk shall also  
2 mail a copy of the complaint and a copy of this Order to the State  
3 Attorney General's Office in San Francisco, and a copy of this  
4 Order to Plaintiff.

5 3. Defendants are cautioned that Rule 4 of the Federal  
6 Rules of Civil Procedure requires them to cooperate in saving  
7 unnecessary costs of service of the summons and complaint.  
8 Pursuant to Rule 4, if Defendants, after being notified of this  
9 action and asked by the Court, on behalf of Plaintiff, to waive  
10 service of the summons, fail to do so, they will be required to  
11 bear the cost of such service unless good cause be shown for their  
12 failure to sign and return the waiver forms. If service is  
13 waived, this action will proceed as if Defendants had been served  
14 on the date that the waiver is filed, except that pursuant to Rule  
15 12(a)(1)(B), Defendants will not be required to serve and file an  
16 answer before sixty days from the date on which the request for  
17 waiver was sent. (This allows a longer time to respond than would  
18 be required if formal service of summons is necessary.)

19 Defendants are advised to read the statement set forth at the  
20 foot of the waiver form that more completely describes the duties  
21 of the parties with regard to waiver of service of the summons.  
22 If service is waived after the date provided in the Notice but  
23 before Defendants have been personally served, the answer shall be  
24 due sixty days from the date on which the request for waiver was  
25 sent or twenty days from the date the waiver form is filed,  
26 whichever is later.  
27  
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1           4. No later than thirty days from the date of this Order,  
2 all parties shall file their consent or declination to proceed  
3 before a United States Magistrate Judge.

4           5. The following briefing schedule shall govern dispositive  
5 motions in this action:

6           a. No later than thirty days from the date their  
7 answer is due, Defendants shall file a motion for summary judgment  
8 or other dispositive motion. If Defendants file a motion for  
9 summary judgment, it shall be supported by adequate factual  
10 documentation and shall conform in all respects to Federal Rule of  
11 Civil Procedure 56. If Defendants are of the opinion that this  
12 case cannot be resolved by summary judgment, they shall so inform  
13 the Court prior to the date the summary judgment motion is due.  
14 All papers filed with the Court shall be promptly served on  
15 Plaintiff.

16           At the time of filing the motion for summary judgment or  
17 other dispositive motion, Defendants shall comply with the Ninth  
18 Circuit's decisions in Woods v. Carey, 684 F.3d 934 (9th Cir.  
19 2012), and provide Plaintiff with notice of what is required of  
20 him to oppose a summary judgment motion or other dispositive  
21 motion.

22           b. Plaintiff's opposition to the motion for summary  
23 judgment or other dispositive motion shall be filed with the Court  
24 and served on Defendants no later than twenty-eight days after the  
date on which Defendants' motion is filed.

25           Before filing his opposition, Plaintiff is advised to read  
26 the notice that will be provided to him by Defendants when the  
27 motion is filed, and Rule 56 of the Federal Rules of Civil  
28 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party

1 opposing summary judgment must come forward with evidence showing  
2 triable issues of material fact on every essential element of his  
3 claim). Plaintiff is cautioned that because he bears the burden  
4 of proving his allegations in this case, he must be prepared to  
5 produce evidence in support of those allegations when he files his  
6 opposition to Defendants' summary judgment motion. Such evidence  
7 may include sworn declarations from himself and other witnesses to  
8 the incident, and copies of documents authenticated by sworn  
9 declaration. Plaintiff will not be able to avoid summary judgment  
10 simply by repeating the allegations of his complaint.

11 c. Defendants shall file a reply brief no later than  
12 fourteen days after the date Plaintiff's opposition is filed.

13 d. The motion shall be deemed submitted as of the date  
14 the reply brief is due. No hearing will be held on the motion  
15 unless the Court so orders at a later date.

16 6. Discovery may be taken in this action in accordance with  
17 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
18 to Rule 30(a)(2) is hereby granted to Defendants to depose  
19 Plaintiff and any other necessary witnesses confined in prison.

20 7. All communications by Plaintiff with the Court must be  
21 served on Defendants, or Defendants' counsel once counsel has been  
22 designated, by mailing a true copy of the document to Defendants  
23 or Defendants' counsel.

24 8. It is Plaintiff's responsibility to prosecute this case.  
25 He must keep the Court informed of any change of address by filing  
26 a separate document entitled, "Notice of Change of Address," and  
27 must comply with the Court's orders in a timely fashion.

28 9. Extensions of time are not favored, though reasonable  
extensions will be granted. Any motion for an extension of time

1 must be filed no later than fourteen days prior to the deadline  
2 sought to be extended.

3 10. This Order terminates docket no. 4.

4 IT IS SO ORDERED.

5 Dated: 6/12/2014

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7 CLAUDIA WILKEN  
8 UNITED STATES DISTRICT JUDGE  
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United States District Court  
For the Northern District of California